

On the brief,
Christopher Heyer, Esq.

TABLE OF CONTENTS

Table of Authorities	ii
Preliminary Statement	1
Argument	2
Defendant UBS Financial is Entitled to the Same Relief as Sought by Defendant Zurich American Insurance Company in its Motion to Dismiss the Second Claim and Third Claim of Plaintiff's Amended Complaint	2
Conclusion	4

TABLE OF AUTHORITIES

Statutes

ERISA 502(a)(1)(B), 29 U.S.C. 1132(a)(1)(B)	2
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PRELIMINARY STATEMENT

Defendant UBS Financial Services, Inc. (hereinafter “UBS Financial”) submits this brief in response to the Motion to Dismiss filed by Defendant Zurich American Insurance Company (hereinafter “Zurich American”) seeking to dismiss the Second and Third Claims of the Plaintiff’s Amended Complaint. UBS Financial joins in the request for relief sought in Zurich American’s motion to dismiss for the same reasons as set forth in the legal memorandum filed by Zurich American.

UBS Financial is the Plan Administrator for the Accident Insurance Plan (the “Plan”), which forms the basis of Plaintiff’s Amended Complaint. UBS Financial explicitly stated in the Summary Plan Description (“SPD”), that it reserved the authority to designate another entity to carry out any of the Plan Administrator’s duties and responsibilities under the Plan, including designating a claims administrator with respect to the Plan. UBS Financial appointed Defendant Zurich American as the Claims Administrator for adjudicating claims for benefits under the Accident Insurance Plan. Zurich American had the authority for adjudicating claims for benefits under the Accident Insurance Plan and for deciding appeals of denied claims.

The SPD provided, explicitly and clearly, that the SPD was not intended to be dispositive of the rights of claimants under the Plan; the terms and conditions of the insurance policies would govern whether a party was entitled to benefits under the Plan. As set forth in the Summary Plan Description (“SPD”),

The SPD does not determine the rights under the Accident Insurance Plan, but is intended only to summarize the important provisions of the plan. If there is any inconsistency between this Summary and the Accident Insurance Plan documents, the terms of the plan documents will govern.

UBS Financial respectfully requests that, to the extent this Court grants the motion to dismiss filed by Zurich American, such relief should also be applied to UBS Financial.

ARGUMENT

**DEFENDANT UBS FINANCIAL SERVICES INC. IS ENTITLED TO THE SAME RELIEF
SOUGHT BY DEFENDANT ZURICH AMERICAN INSURANCE COMPANY IN ITS
MOTION TO DISMISS THE SECOND CLAIM AND THE THIRD CLAIM OF THE
PLAINTIFF'S AMENDED COMPLAINT**

Defendant UBS Financial joins in the request for relief sought in Defendant Zurich American's motion to dismiss the Second Claim and Third Claim of Plaintiff's Amended Complaint for the same reasons set forth in the legal memorandum filed by Zurich American. UBS Financial submits this Memorandum of Law for the purposes of providing this Court with additional information relating to the terms and function of the SPD, which forms a significant part of the Plaintiff's Amended Complaint.

UBS Financial respectfully submits that certain claims contained in Plaintiff's Amended Complaint are duplicative to the extent that they all seek relief in the form of money damages as provided in section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1132(a)(1)(B). Accordingly, as argued by Zurich American, the remaining claims in Plaintiff's Amended Complaint should be dismissed.

Moreover, UBS Financial states that in further support of Zurich American's argument contained in Point V of Zurich American's memorandum of law, equitable relief in the present case is not appropriate as Plaintiff cannot demonstrate the requisite detrimental reliance or evidence of fraud to warrant granting equitable relief concerning the SPD. The Introduction of the SPD explicitly provides:

This booklet, called a Summary Plan Description or SPD, contains a description of the UBS Financial Services Inc. Travel Accident Insurance Plan in effect on June 1, 2007.

Please read this booklet carefully and keep it in a safe place. You should also let your beneficiary(ies) know where you keep this document.

This SPD is intended to describe, in general terms, the benefits you may be provided

under the Accident Insurance Plan. The Accident Insurance Plan is a component plan in, and is thus part of and offered through, the UBS Financial Services Inc. Group Health and Welfare Benefits Plan. A description of each of the other component plans in the Group Health and Welfare Plan is set forth in the separate Summary Plan Description for each such component plan. The SPD does not determine the rights under the Accident Insurance Plan, but is intended only to summarize the important provisions of the plan. If there is any inconsistency between this Summary and the Accident Insurance Plan documents, the terms of the plan documents will govern.

Accordingly, any allegations that UBS Financial either misrepresented the terms of the SPD to the Decedent, or somehow committed fraud with respect to the SPD, are misplaced and unsupported in light of the clear and explicit disclaimer contained in the SPD as set forth above.

CONCLUSION

For the foregoing reasons, Defendant UBS Financial Services Inc. respectfully requests that this Court dismiss the Second Claim and Third Claim of Plaintiff's Amended Complaint against Defendant UBS Financial Services Inc., with the same force and for the same reasons set forth in the Motion to Dismiss filed by Defendant Zurich American Insurance Company.

Dated: June 21, 2011

Respectfully Submitted,

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